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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/510,086

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Andreas Harz

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25255

7590

05/28/2009

CLARIANT CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
4000 MONROE ROAD
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EXAMINER

ABU ALI, SHUANGYI

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

05/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/510,086	Applicant(s) HARZ ET AL.	
	Examiner SHUANGYI ABU ALI	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6,8,9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,8,9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/09/2008</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 1-2, 6, 8-9 and 11-13 remain for examination wherein claims 1 and 9 are amended.

Claim Rejections - 35 USC § 103

The rejection of Claim 1-2, 6-8 and 11-13 under 35 U.S.C. 103(a) as being unpatentable over combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No 6,262,153 to Webster et al. as generally set forth in the previous office action mailed 12/19/2008 stands.

The text of those sections of title 35 US Code not included in this action can be found in the prior Office Action.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No 6,262,153 to Webster et al. , further in view of JP 61141692

Regarding claim 9, combined teaching of Lofgren et al and Webster et al. disclose a method of coloring fertilizer set forth above, but they are silent that the amount of the pigment composition is used to color the fertilizer as applicant set forth in claim 9.

However, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to coat the fertilizer as applicant set forth in the claim 9, motivated by the fact that JP'692, also drawn to coating fertilizer,

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disclose pigment composition amount in the range of 0.001-3 part per 100 part weight of fertilizer is used to color fertilizer (abstract).

Response to Amendment

Applicants' amendments to claim 9, filed on 01/30/2009 are acknowledged. As such, the rejections to the claim 9 based on 35 USC § 112, second paragraph, set forth in the previous Office Action, are withdrawn.

Response to Arguments

Applicant's arguments filed 01/30/2009 have been fully considered but they are not persuasive. The rejection of claim 9 based on Tilokavichai is withdrawn since the applicant amended the amount of pigment used in the coating composition.

Applicant argues that the teaching of Lofgren et al. fails to disclose the use of the organic pigment. The Examiner respectfully submits that Webster is used to show that organic pigment can be used in the process of coating fertilizer. The use of a coloring media to provide a color to the composition is clearly within the scope of the skilled artisan. Talc can be considered a pigment and the substitution of one type of pigment for another for the same purpose is clearly within the scope of the skilled artisan. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on

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combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that the teaching of Webster discloses the use of the organic pigment and UV absorber to color the fertilizer and applicant's own invention does not include UV absorber. The Examiner respectfully submits that Webster is used to show that organic pigment can be used to color fertilizer. Webster et al do not disclose that without using the UV absorber the fertilizer can not be colored. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that Webster fails to disclose how to use the wax-based particle to color the fertilizer. The Examiner respectfully submits that the teaching of Lofgren discloses the process of coating the fertilizer and Webster discloses that the wax based pigment composition can be used in fertilizer. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHUANGYI ABU ALI whose telephone number is (571)272-6453. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.A. LORENZO/
Supervisory Patent Examiner, Art Unit 1793

/S. A./
Examiner, Art Unit 1793